

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD EUGENE VILLEGRAS,) No. C 11-2708 JSW (PR)
Petitioner,)
vs.)
TOMAS V. KELLEY,)
Respondent.)
_____) (Docket Nos. 2 & 9)

**ORDER OF DISMISSAL; GRANTING
LEAVE TO PROCEED IN FORMA
PAUPERIS; DENYING MOTION TO
AMEND**

Petitioner, proceeding pro se, has filed a habeas corpus petition challenging his state court conviction and his continued obligation to register as a sex offender. He was convicted in Santa Clara County Superior Court in 1981, and he has completed his sentence for that conviction. He continues to be required to register as a sex offender under California Penal Code § 290.

The federal writ of habeas corpus is only available to persons "in custody" at the time the petition is filed. See 28 U.S.C. §§ 2241(c), 2254(a); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). This requirement is jurisdictional. *Id.* A petitioner who files a habeas petition after he has fully served his sentence and who is not subject to court supervision is not "in custody" for the purposes of this court's subject matter jurisdiction and his petition is therefore properly denied. *See De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990). Petitioner has completed his sentence, and his "merely being

1 subject to a sex offender registry requirement does not satisfy the ‘in custody’
2 requirement.” *Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001). As Petitioner is not
3 “in custody” for purposes of federal habeas jurisdiction, the instant petition is
4 DISMISSED. In light of this conclusion, moreover, Petitioner’s motion to amend
5 (docket number 9) is DENIED.

6 Furthermore, Petitioner has failed to make a substantial showing that his claims
7 amounted to a denial of his constitutional rights and that a reasonable jurist would find
8 this Court’s denial of his claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473,
9 484 (2000). Consequently, no certificate of appealability is warranted in this case.

10 The application to proceed in forma pauperis (docket number 2) is GRANTED.

11 The Clerk shall enter judgment and close the file.

12 IT IS SO ORDERED.

13
14 DATED: December 21, 2011


15 JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

EDWARD E. VILLEGRAS,

Case Number: CV11-02708 JSW

Plaintiff,

CERTIFICATE OF SERVICE

v.

KELLEY, ET AL. et al.

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

13 That on December 21, 2011, I SERVED a true and correct copy(ies) of the attached, by
14 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter
listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an
inter-office delivery receptacle located in the Clerk's office.

17 Edward Eugene Villegas
1207 Lancelot Land
18 San Jose, CA 95127

20 | Dated: December 21, 2011

Jennifer Ottolini

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk